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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. [redacted]112

ROCKWELL MANUFACTURING COMPANY, *Petitioner*,

v.

THE STANLEY WORKS, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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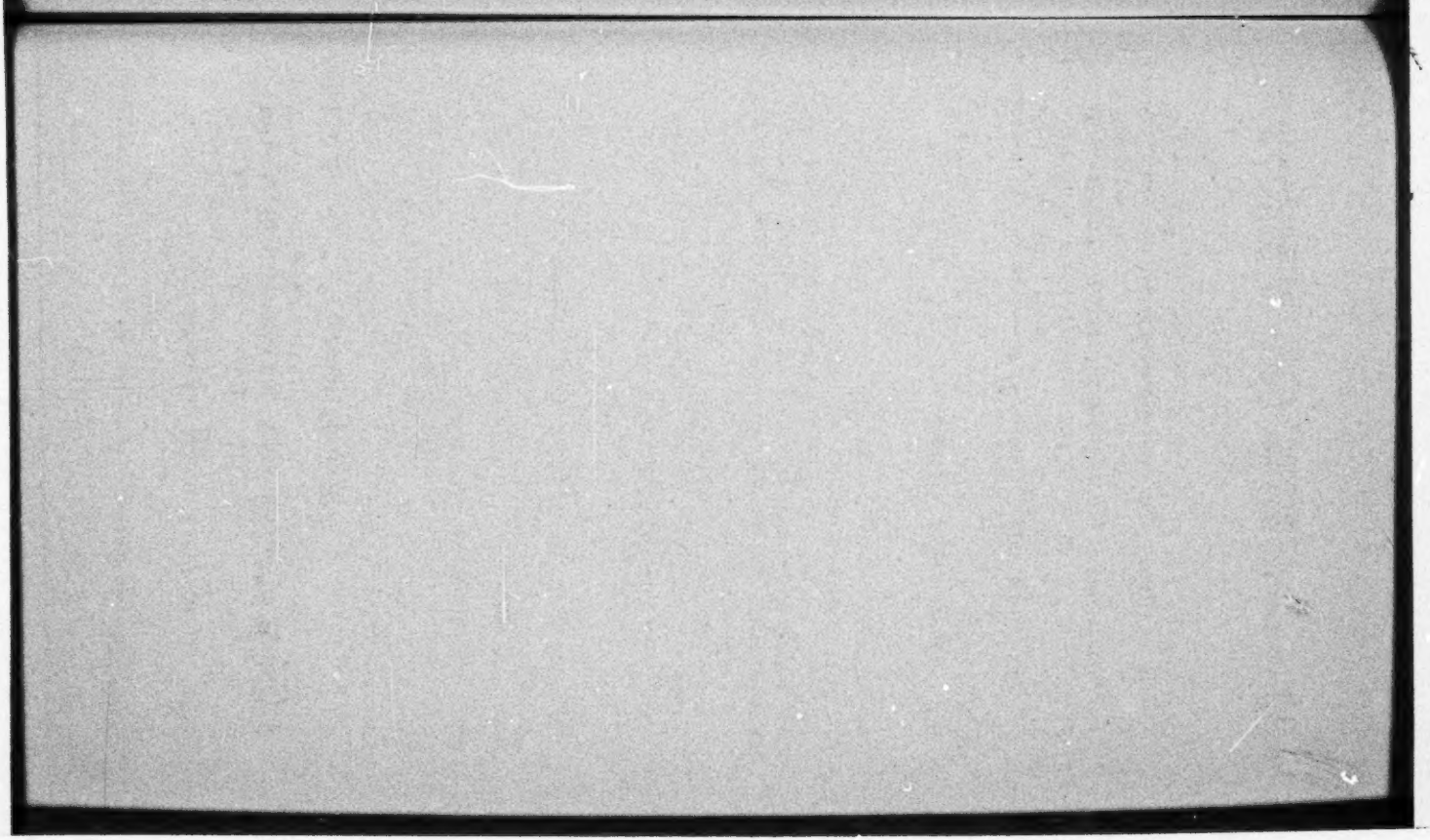

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Rockwell Manufacturing Company, respectfully prays for a Writ of Certiorari to the Circuit Court of Appeals for the Third Circuit to review a judgment of that Court entered April 13, 1953, reported only at 97 USPQ 189 holding invalid Petitioner's Letters Patent No. 2,069,395, formerly held to be valid (*The Delta Manufacturing Company* v. *The E. L. Essley Machinery Company,* 63 Fed. Supp. 930; affirmed 153 Fed. (2d) 905, cert.

den. 328 U.S. 867). A certified transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 (1) of the rules of this Court.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioner is the owner of Letters Patent No. 2,069,395 which relates to safety shields for grinding wheels and the like designed to effectively guard the user of a grinding wheel from flying particles and to provide shadowless illumination of the wheel and work viewed through the shield to assure a clear view of the work area of the high speed grinding wheel and the work, and of the operator's hands holding the work, to minimize the danger of accidental contact of the hands with the wheel.

Petitioner's predecessor, The Delta Manufacturing Company, in 1943 brought suit in the District Court for the Eastern District of Wisconsin against the E. L. Essley Machinery Company, to enjoin infringement of claims 6, 7 and 8 of Letters Patent 2,069,395. Infringement was admitted. The District Court held claims 6, 7 and 8 of the patent valid (63 Fed. Supp. 930). This decision was affirmed by the Circuit Court of Appeals for the Seventh Circuit (153 Fed. (2d) 905) and certiorari was denied by this Court 328 U.S. 867; (1946).

In 1948 respondent brought a declaratory judgment action in the United States District Court for the Western District of Pennsylvania requesting a declaratory judgment holding petitioner's Letters Patent No. 2,069,395 invalid and not infringed by respondent's "FLUD-LITE" shield. Petitioner counter-claimed for infringement of Letters Patent No. 2,069,395 by reason of the manufacture and sale by respondent of its "FLUD-LITE" shield and for an accounting and assessment of damages. Petitioner stood trial on its charge of infringement of only claim 6 of said Letters Patent 2,069,395. The District Court of Pennsylvania found claim 6 of the patent invalid but made

no final finding on the question of infringement 106 Fed. Supp. 311; July 30, 1952 (R. 320a-332a).*

The Circuit Court of Appeals for the Third Circuit affirmed the judgment of the District Court (97 USPQ 189). It is this decision for which petitioner is now seeking this Court's review on certiorari.

The evidence relating to validity before the Wisconsin and Pennsylvania Courts establishes identical material facts.

Despite the presumption of validity which attaches to all duly issued patents and the prior holding of validity in the two courts of the Seventh Circuit, the courts of the Third Circuit with the same material facts before them had a "clear conviction" of the invalidity of the patent.

The direct conflict between these decisions as to validity results from the failure of the Court of Appeals for the Third Circuit to consider all the established material facts relating to validity and to apply the criteria of invention established and long applied by this Honorable Court, long recognized in the 7th, 6th and 2nd circuits and now embodied in the Patent Act of 1952 (Title 35, United States Code) and from failure of the Court of Appeals for the Third Circuit to correctly apply the law of patentability to the established material facts.

JURISDICTION

Jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Sec. 1254 (1).

THE QUESTIONS PRESENTED

1. Is Letters Patent 2,069,395 valid?

2. Did the court err in holding claim 6 of Letters Patent 2,069,395 invalid?

3. Did the court err in holding claim 6 of Letters Patent 2,069,395 to be an unpatentable aggregation?

---

* Refers throughout to petitioner's appendix in the court below.

4. Did the court err in failing to correctly apply the law of patentability to the conceded facts?

5. Having found that claim 6 of Letters Patent 2,069,395 defines a "useful improvement" (R. 327a) which provides a "more efficient grinder safety shield than any of the single bulb safety shields disclosed by the prior art" (R. 323a, 324a) and having recognized that the question of patentable novelty had been decided affirmatively by both the Patent Office in granting the patent containing claim 6 and the Wisconsin courts in upholding the validity and infringement of claim 6 in the prior litigation (R. 326a) did the court err in affirming the District Court and failing to find there was at least a doubt as to patentable novelty?

6. Having found that claim 6 of Letters Patent 2,069,395 defines a "useful improvement" (R. 327a) which provides a "more efficient grinder safety shield than any of the single bulb safety shields disclosed by the prior art" (R. 323a, 324a), and having recognized that the question of patentable novelty had been decided affirmatively by both the Patent Office in granting the patent containing claim 6 and the Wisconsin courts in upholding the validity and infringement of claim 6 in the prior litigation (R. 326a) did the court err in affirming the rejection by the District Court of the recognized criteria of patentable novelty announced by this Court and confirmed by Congress in Chapter 10 of the Patent Act of 1953, Title 35, United States Code (1952), established by petitioner's evidence of long felt want fulfilled, acceptance and imitation by the trade and commercial success?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. A direct basic conflict regarding the law of patentability exists between the decision of the Court of Appeals for the Third Circuit for which review is here sought and the prior decision of the Court of Appeals for the Seventh Circuit (153 Fed. (2d) 905) cert. den. 328 U.S. 867 (1946), involving the same subject matter.

2. Resolution of this basic conflict between the law of patentability applied in the decision for which review is here sought and the decision of the Court of Appeals for the Seventh Circuit (which is consistent with prior controlling decisions of this Honorable Court and the decisions of the Courts of Appeals of the 7th, 2nd and 6th Circuits) is necessary to clarify and stabilize the Patent Law, to establish a uniformity in the tests of patentability, and to prevent misapplication of prior decisions of this Honorable Court and assure inventors, the courts and businessmen of a reliable standard for determining the existence of a patentable invention.

PRAYER FOR CERTIORARI

Therefore your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit to the end that the proceedings below may be reviewed and determined by this Court, and that the judgment of the Circuit Court of Appeals be reversed, and that petitioner be granted such other and further relief as may seem proper.

Respectfully submitted,

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No.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals dated April 13, 1953 is reported only at 97 USPQ 189 and appears in the certified record.

The opinion of the District Court dated July 30, 1952 is reported at 106 Fed. Supp. 311; (R. 320a-334a).

JURISDICTION

The jurisdiction of this honorable court is invoked under title 28 United States Code Section 1254 (1) reading as follows so far as it is pertinent:

> "Section 1254. Courts of Appeals: Certiorari; * * *. Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to a civil or criminal case, before or after rendition of judgment or decree; * * * ".

In a decision dated April 13, 1953 and reported at 97 USPQ 189, the Circuit Court of Appeals for the Third Circuit entered a final judgment on an appeal duly taken under Title 28 United States Code, Section 1291 affirming the final judgment of the District Court for the Western District of Pennsylvania dated July 30, 1952 and reported at 106 Fed. Supp.. 311; 94 USPQ 208, holding claim 6 of petitioner's patent 2,069,395 invalid. On September 9, 1952 the District Court in a Memorandum decision (R. 334a) stated that it did not reach the question of infringement.

For the reasons outlined in the foregoing petition and developed more fully below, this decision of the Circuit Court of Appeals for the Third Circuit as well as the appealed District Court decision is in direct conflict with a final judgment of the Court of Appeals for the Seventh Circuit dated February 28, 1946 and reported at 153 Fed. 2(d) 905, Cert. Den. 328 U.S. 867, holding claims 6, 7 and 8 of petitioner's said Letters Patent 2,069,395 valid and infringed.

It is accordingly here respectfully requested that this Honorable Court apply Rule 38(5)(b) of the Rules of this Court and exercise the jurisdiction conferred upon it by Title 28 United States Code, Sec. 1254 (1).

STATEMENT OF THE CASE

Petitioner's Letters Patent No. 2,069,395

Petitioner is the owner of Letters Patent No. 2,069,395. This patent relates to safety shields for grinding wheels and the like. It discloses and claims the first and only shield that effectively guards the user of a grinding wheel from flying particles and provides bright shadowless illumination of the grinding wheel and work area assuring a clear view of the work and of the operator's hands holding the

work from a safe, comfortable working position, thus minimizing danger of accidental contact of an operator's hand with the wheel and increasing his working accuracy and efficiency.

As found by the District Court in each of the cases, the safety shields for grinders defined in petitioner's patent are useful primarily in short "touch up" or tool sharpening and light grinding operations (R. 320a). Such operations are carried on in all shops many times a day hurriedly by workmen desiring to keep up high quality production through use of sharp tools.

Grinding machines of this type have been in widespread use for over 200 years by mechanics and workers in many arts for the sharpening of tools and grinding of work pieces. During the two century period of use of such machines prior to the invention of Letters Patent 2,069,395 workers have been subjected to a constant risk of injury resulting from particles of the abrasive wheels and metal from work pieces being thrown off during grinding operations and because of accidental contact with the wheels in passing or operation of them. Such injuries resulted in loss of eyesight, infection, loss of time and work spoilage (R. 197a, 198a, 200a, 438a) to the extent that the problem of protection of workers against such injuries was recognized and a solution was attempted as early as 1767 by use of a large transparent shield fixed over a grinding wheel (R. 439a).

The consequences of worker injury and loss of time and work became increasingly acute with the expansion of industrial activities and the development of high speed, power driven grinders in the 1900s. In spite of the many unsuccessful attempts by the legions of mechanics, who daily used grinders, and of skilled engineers to solve the problems, and despite the continued demands of management, labor unions and safety committees that workers be adequately protected from the dangers inherent in the use of high speed grinding machines, the problem remained un-

solved until the conception of the invention defined in patent 2,069,395.

Herbert E. Tautz, the patentee, was the founder and owner of the Delta Manufacturing Company, petitioner's predecessor. The Tautz safety shield was introduced on the market in 1935 (R. 296a) during the depression by the then very small Delta Manufacturing Company. It found ready acceptance, in spite of low price shields offered by its competition. It enabled this small company to very successfully compete in the sale of grinders with large, well established chain organizations, such as Sears & Roebuck, large established industrial tool manufacturers, such as Hammond Machinery and many others, including respondent (R. 298a, 299a). It was accepted and specified by Government agencies for use in their shops as a result of demonstration and test (R. 301a). It also enjoyed a substantial sale as an attachment for grinders of other manufacturers (R. 303a).

The Surty Manufacturing Company, manufacturers of the prior art grinding shields heavily relied upon by the courts of the Third Circuit in reaching their conclusion of invalidity of petitioner's patent, imitated the patented shield as soon as it appeared and finally in 1938 accepted a license under petitioner's patent (R. 430a-434a). Surty is still paying royalties and the record shows that 90% of its present business consists of sales of the licensed grinder shields (R. 61a, 62a).

Others who first imitated the shield of petitioner's Letters Patent and then took licenses are the Boyer-Campbell Company and the Black and Decker Manufacturing Company (R. 478a, 474a-477a).

The Issues

As noted above (supra 8), the Circuit Court of Appeals for the Seventh Circuit held claims 6, 7 and 8 of petitioner's Letters Patent 2,069,395 valid and infringed, and the Circuit Court of Appeals for the Third Circuit affirmed the

judgment of the District Court holding claim 6 to be invalid and held the District Court "quite properly did not reach the question of infringement".

The conflict between the decisions of the courts of the Seventh and Third Circuits thus is confined solely to validity of claim 6 of petitioner's Letters Patent 2,069,395. The remaining claims of this patent were not in issue in the courts of the Third Circuit.

SPECIFICATION OF ERRORS

If the Writ of Certiorari is granted, petitioner will urge that:

1. The court erred in holding claim 6 of Letters Patent 2,069,395 invalid.

2. The court erred in failing to correctly apply the law of patentability to the conceded facts.

3. The court erred in holding claim 6 of Letters Patent 2,069,395 to be an unpatentable aggregation.

4. Having found that claim 6 of Letters Patent 2,069,395 defines a "useful improvement" (R. 327a) which provides a "more efficient grinder safety shield than any of the single bulb safety shields disclosed by the prior art" (R. 323a, 324a), and having recognized that the question of patentable novelty had been decided affirmatively by both the Patent Office in granting the patent containing claim 6 and the Wisconsin courts in upholding the validity and infringement of claim 6 in the prior litigation, (R. 326a) the court erred in affirming the District Court and failing to find there was at least a doubt as to patentable novelty.

5. Having found that claim 6 of Letters Patent 2,069,395 defines a "useful improvement" (R. 327a) which provides a "more efficient grinder safety shield than any of the single built safety shields disclosed by the prior art" (R. 323a, 324a), and having recognized that the question of patentable novelty had been decided affirmatively by both

the Patent Office in granting the patent containing claim 6 and the Wisconsin courts in upholding the validity and infringement of claim 6 in the prior litigation, (R. 326a) the court erred in affirming the rejection by the District Court of the recognized criteria of patentable novelty announced by this Court confirmed by Congress in Chapter 10 of the Patent Act of 1953, Title 35 United States Code (1952), established by petitioners evidence of long felt want fulfilled, acceptance and imitation by the trade, and commercial success.

ARGUMENT

The courts of the Seventh and Third Circuits reached opposite decisions regarding the validity of claim 6 of petitioner's Letters Patent on the basis of evidence which establishes identical material facts. These decisions, we submit, present a clear and irreconcilable conflict which should be resolved by this court under the following authorities:

Diamond Rubber Company of New York v. *Consolidated Rubber Tire Company,* 220 U.S. 428.
Permutit Co. v. *Graver Corp.,* 284 U.S. 52.
Cuno Engineering Corp. v. *Automatic Devices Corp.,* 314 U.S. 84.
Temco Electric Motor Manufacturing Company v. *Apco,* 275 U.S. 319.
General Electric Co. v. *Wabash Appliance Corp.,* 304 U.S. 364.
Maytag Co. v. *Hurley Machine Co.,* 307 U.S. 243.
Standard Brands Inc. v. *National Grain Yeast Corp.,* 308 U.S. 34.

The following quotation of the Court of Appeals for the Third Circuit, which comments upon the invention defined in claim 6 of the patent, shows the prior art principally relied on by the court in its holding of invalidity:

> "It (petitioner's invention) emanated directly from the Kelleher patent and the various non-glare lighting methods current at the time."

The Kelleher patent under which the commercial Acme shield was produced was fully considered by both the Seventh Circuit Courts and by the Patent Office. The Acme shield was fully demonstrated to both courts in the Seventh Circuit, and every exhibit referred to in the decision of the Court of Appeals for the Third Circuit was fully demonstrated to the District Court and considered by the Court of Appeals for the Seventh Circuit.

The Third Circuit Court of Appeals specifically recognized that the "non-glare lighting methods" referred to in the quoted portion of its decision is represented by a group of patents including the Mitchell Patent No. 565,011. This patent and similar patents were also fully considered by the courts of the Seventh Circuit. The Patent Office also considered the proposition of "shadowless illumination" together with Kelleher.

The only patents specifically referred to in the decision of the Court of Appeals for the Third Circuit not considered by the Court of Appeals for the Seventh Circuit are the patents to Loveberg 1,409,114, two identical foreign patents to Schaaff, namely, British Serial No. 249,521 and Swiss Serial No. 125,035 and the patent to Klorer 1,175,274. The opinions of the Third Circuit Courts show these patents are cumulative and no more pertinent than the patents considered by the courts of the Seventh Circuit.

Finally there is no difference in the testimony of witnesses which could reasonably support the diverse conclusions of the Seventh and Third Circuit Courts as to patentable novelty, or in any respect alter the material facts upon which the decisions are based.

The courts of both circuits recognized that the invention claimed in petitioner's Letters Patent is a useful improvement over the prior patents and uses before them. The Third Circuit Courts, nevertheless, reached a "clear conviction" of invalidity upon consideration of a portion only of the evidence. On the contrary, after full consideration of the same prior art as that before the Court of Appeals for

the Third Circuit, the Court of Appeals for the Seventh Circuit stated:

> "True, Tautz's disclosure in this respect is quite surprising in its simplicity, and when we consider the results of the disclosure in respect to the preservation of life and body, in the face of the constant demand of the public, we are the more surprised that someone did not make the disclosure sooner, but they did not. It is the aggressive rather than the dormant skill which measures the state of the art, and it is the results which determine utility. * * * Of course commercial success alone is not sufficient to establish patentability, but, where, as here, patentability, at first glance might seem doubtful, merely because of the simplicity of the disclosure, the presence or absence of commercial success should be considered in resolving such doubt."

The courts of the Seventh and Third Circuits are also in direct conflict with respect to their findings and conclusions regarding the defense of "unpatentable aggregation" vigorously asserted against the claim in issue before each of the courts.

The courts of the Seventh Circuit considered and expressly rejected this defense, the Wisconsin District Court stating:

> " * * * Defenses are invalidity for lack of invention, anticipation and aggregation * * *.
>
> * * *
>
> "Defendant's position on aggregation cannot be sustained."

The District Court's position was affirmed on appeal.

The Pennsylvania District Court in direct opposition to this found that " * * * Claim 6 calls for a mere aggregation * * * ". (R. 325a).

The Third Circuit Court of Appeals expressly approved this finding as follows:

> "We think the district judge was justified in finding, as he did, that it ' * * * calls for a mere aggregation

of a principle of old parts or elements, which in the aggregation performed no new or different function or operation than heretofore performed or produced by them.' We think that under settled law Tautz Claim No. 6 was not a patentable invention. Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147; Cuno Engineering Corporation v. Automatic Devices Corporation, 314 U.S. 84; Packwood v. Briggs & Stratton Corp., 195 F. 2d 971 (3 Cir. 1952)."

The conflict of opinion as to the validity of claim 6 of patent 2,069,395, we submit, results solely from the Third Circuit Courts' failure to recognize the effect of those of its findings which are consistent with those of the Seventh Circuit courts and its failure to properly apply the criteria of patentability which the Seventh Circuit Courts properly applied in view of those findings.

We submit the courts of the Third Circuit, reasoning subjectively by hindsight, reached the conclusion of invalidity upon an unwarranted interpretation of the criteria of patentability set forth in *Cuno Engineering Corporation* v. *Automatic Devices Corporation,* 314 U.S. 84 and *The Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Corp.,* 340 U.S. 147 and upon its own prior decision in the case of *Packwood* v. *Briggs and Stratton Corporation,* 195 Fed. 2(d) 971 (1952).

The courts of the Seventh Circuit on the contrary in reaching a conclusion of validity followed the sound objective guide of history as approved by the majority opinion of this honorable court in the case of *Goodyear Tire and Rubber Company Inc.* v. *Ray-O-Vac Company,* 321 U.S. 275.

We, therefore, respectfully request that this court resolve this important conflict and to that end grant a writ

of certiorari, review the decision of the court below and finally reverse it.

Respectfully submitted,

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This is an ordinary patent case merely involving the question of the validity of Claim 6 of the Tautz patent 2,069,395, granted February 2, 1937, on a safety or viewing device of an old and well-known character. This action was brought by respondent, The Stanley Works, under the Declaratory Judgment Action, the petitioner for a long time having harassed respondent's customers of the accused device while at the same time refusing to bring an infringement action against respondent.

The petition for writ of certiorari is primarily based on an alleged "direct basic conflict regarding the law"

of the validity of Claim 6 between the decision of the Court of Appeals for the Seventh Circuit in the Delta v. Essley case and the decision of the Court of Appeals for the Third Circuit in the instant case. As we shall point out, the adjudications of the Courts are only apparently conflicting.

No question of general or public interest is here involved. The Tautz patent in suit will expire in a few months (February 2, 1954). Only the parties hereto are interested in the outcome of this case. The device of the Tautz patent has, in fact, made no great impression in the commercial field. True, it has been on the market for fifteen years or more, but the number sold is relatively small compared with that of hundreds of thousands of competitive devices such as goggles, unlighted shields, single-light shields, viewing devices, etc. With possibly two exceptions, none of the many manufacturers of grinding machines has adopted the Tautz shield.

No important question of Federal law is involved here.

THE PETITION FOR WRIT OF CERTIORARI

This Honorable Court has frequently pointed out the necessity for clear, definite and complete disclosures concerning the controversy when applying for certiorari, the Court saying that it is impossible for it to examine the record and it must rely largely on preliminary papers. Certainly, neither the present petition for certiorari nor the brief in support thereof meets these requirements. They lack facts essential to an adequate appreciation of the situation by this Court. They are confusing and ambiguous. They make no reference to the disclosure of the Tautz patent in suit except by sweeping laudatory assertions and no reference to the prior art except by way of broad and general condemnations of it. They generally assert that there is a direct basic conflict regarding the law of patentability between the Courts for the Third and the Courts for the Seventh Circuits but do not definitely

point out what that conflict is except for the assertion that the Courts arrived at different ultimate conclusions as to the validity of Claim 6 in suit. They assert, contrary to fact, that the decisons of the Wisconsin Courts* and the Pennsylvania Courts* are based on "identical material facts" relating to validity, this in spite of the fact that the Distrct Court and the Court of Appeals in their decisions in the instant case specifically pointed out wherein the facts presented in the two cases were different.

The petition for a writ is so confusing, ambiguous and rambling and is so devoid of statement as to just what petitioner's position is that we are unable to decipher just what the petitioner had in mind in filing the writ. This Court, upon reading the petition for certiorari and the supporting brief, may well feel justified in denying the petition forthwith. However, as this Court may wish reasonably definite and complete disclosures concerning the controversy, and may wish our views in the matter, we make the following comments under appropriate headings:

THE TAUTZ PATENT IN SUIT

The patent is reproduced in Defendant's Appendix starting on page 335a. The following finding (D.A. 321a) by the Pennsylvania District Court clearly explains the structure of the shield disclosed therein:

> "10. The Delta shield covered by the Tautz patent consists of a metal frame having a depending peripheral skirt, inwardly-disposed, depending partition members generally paralleling three sides of the depending skirt, a central opening closed by a transparent window or panel and lying within the confines of the depending partition members so as to provide peripheral recesses at the sides and back for receiving

*For convenience, the *Delta* v. *Essley* case will be referred to as the Wisconsin case and the District Court for the Eastern Division of Wisconsin and the Circuit Court of Appeals for the Seventh Circuit as the Wisconsin Courts. The instant *Stanley* v. *Rockwell* case will be referred to as the Pennsylvania case or instant case, and the District Court for the Eastern Division of Pennsylvania and the Court of Appeals for the Third Circuit as the Pennsylvania Courts.

light bulbs and electric wiring. A pair of light bulbs are located in pockets at the sides of the shield out of the line of particles thrown off from the wheel."

The District Court and the Court of Appeals in Wisconsin similarly defined the Tautz shield (63 F. Supp. 931 and 153 F. 2d 906).

THE ACCUSED STANLEY SHIELD IN THE INSTANT CASE

This shield is shown in Plaintiff's Exhibit 81, D.A. 435a. It is aptly and concisely described by the Pennsylvania District Court (D.A. 321a)* as follows:

> "11. The accused Stanley shield consists of a frame or housing having a top wall, a reinforcing skirt along its side and front edges, and an opening in its top wall; a transparent panel in said opening, a reflector rearwardly of and extending along the rear edge of the panel, a central bulb mounting located centrally within the reflector, and two bulbs, the bulbs being carried by the sockets in the opposite ends of the mounting.
>
> "12. The accused Stanley device does not have light bulbs located in pockets at the opposite side edges of the transparent panel within the side skirt portions of the housing."

THE ACCUSED HAMMOND SHIELD IN THE WISCONSIN CASE

It is agreed all around that the Hammond accused shield has substantially the same identical construction as the Tautz shield. The Wisconsin District Court compared the Tautz shield with the Hammond shield part for part and feature for feature on page 932, 63 F. Supp.

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* Designations such as D.A. 321a refer to pages of defendant's-appellant's (petitioner's) Appendix.
Designations such as P.A. 60 refer to pages of plaintiff's-appellee's (respondent's) Appendix.

CLAIM 6 IN SUIT

This claim reads as follows:

> "6. A safety shield comprising a housing having a top wall and a skirt, said top wall having an opening, a transparent panel for said opening for viewing work therethrough, and means carried by said housing for directing light onto the work from regions adjacent the opposite sides of said panel and within said skirt."

In the instant case the petitioner urged a very broad construction of Claim 6, as will be seen from the following remarks made by petitioner's counsel during pretrial:

> "Mr. Strauch: That claim was broadly interpreted. It is a means claim. It is very broad.
>
> The Court: What do you mean, a 'means' claim?
>
> Mr. Strauch: The definition, instead of two side pockets, is a combination claim in which the lighting is defined broadly as means directing light from adjacent areas, from areas adjacent the sides."

In the Wisconsin case the District Court, on the insistence of the petitioner, limitedly construed Claim 6 to what is shown in the Tautz patent, the Court finding in the last paragraph of its decision (p. 933, 63 F. Supp.):

> "I am of the opinion that the 'means' referred to [in Claim 6] are the lamps, skirt, and *partition forming the bulb compartments,* which of course are all present in the accused structure." (emphasis supplied)

THE PRIOR ART REFERRED TO BY THE PENNSYLVANIA COURTS IN THE INSTANT CASE

We will refer to this art here in order that this Court may have a general picture thereof and therefore may more readily follow the remainder of this brief.

We see no need of going into detail here as to the prior art patents and the prior art one-light Surty and Acme shields referred to in the decisions by the Pennsylvania Courts for the reason that the disclosures of these patents and the constructions of these shields, and other factors

relating thereto, are clearly and concisely explained in the District Court's findings appearing on pages 322a-324a of appellant's (petitioner's) Appendix. We respectfully call this Honorable Court's attention to those findings. We content ourselves here with listing these prior art items, indicating where the disclosures thereof may be best found in the record.

Prior Art One-light Shield	*Findings*	*Where Shown in Record*
Surty Shield	15, 16, 17	P.A. 57a
Acme Sheld	14, 16, 17	P.A. 58a
Prior Art Patents		
Kelleher	14	D.A. 355a
Jones	18	P.A. 59a
Lindsay	18	P.A. 60a
Schaaff	18	P.A. 61a
Petz	19	D.A. 392a
Ward	19	D.A. 395a
Crane	19	D.A. 402a
Loveberg	19	D.A. 412a
Meinecke	19	D.A. 415a
Mitchell	19	D.A. 440a
Klorer	20	D.A. 408a

We also direct this Honorable Court's attention to the summation of this prior art and its pertinency to the question of invalidity for lack of invention, starting at the bottom of page 327a and ending on page 328a of Defendant's Appendix.

THE FILE WRAPPER OF THE PATENT IN SUIT

Petitioner in its petition and brief repeatedly urges that a presumption of validity attached to the Tautz patent because of its grant, and implies that the Pennsylvania Courts did not take this presumption into consideration.

Actually, no presumption of validity attaches to Claim 6 in suit, construed broadly as petitioner would have it construed, first, because the Patent Office Examiner did not cite any of the prior art relied upon here except the patent to Kelleher, and secondly, the Patent Office Examiner held that Tautz was not entitled to a claim which would cover a shield having two lights at the rear of the panel where there was one before, as in the Kelleher patent.

The Patent Office did not have before it the prior art Surty shield which petitioner's own witness admitted was the most pertinent prior art safety shield. That shield has a peripheral skirt on the frame, something that Kelleher does not have. The Patent Office did not cite the Jones, Lindsay or Schaff patents, or any of the other patents showing that the principles of illumination embodied in the Tautz shield were old in the art.

In connection with the holding of the Patent Office (P.A. 38a, 45a) we point out that the Wisconsin District Court also so held (center 2nd col. p. 932 and first sentence 2nd col. p. 933, 63 F. Supp.), and further the Pennsylvania District Court referred to the Examiner's holding with approval (D.A. 326a).

The accused Stanley shield has two lights at the rear where Kelleher and the Surty shields had one light at the rear, so obviously the Patent Office, the Wisconsin Courts and the Pennsylvania Courts are in agreement that Claim 6, if construed broadly enough to cover the Stanley accused structure, is invalid for lack of patentability.

THE RECORDS OF THE WISCONSIN AND PENNSYLVANIA CASES ARE SO DISSIMILAR AS TO ISSUES AND EVIDENCE ON MATERIAL FACTS THAT THERE IS NO REAL CONFLICT

Before the Pennsylvania Court of Appeals, appellant (petitioner) urged that the Wisconsin case was decided "on a completely comparable record". The Court of Ap-

peals in its decision (P.A. 73a) took appellant somewhat to task for making this statement, saying:

> "Appellant is correct in its acknowledgement that the Delta case does not govern this appeal. It is incorrect in asserting that Delta was decided '* * * on a completely comparable record.' In Delta the accused structure was almost identical to the Tautz shield whereas the presently accused Stanley shield with its lights to the rear of the apparatus differs from both shields in the Wisconsin suit. In that litigation infringement of Tautz Claim No. 7 was admitted and there was no reliance on the defense of non-infringement on appeal. In the Delta decision the Tautz patent was construed as limited to grinder use. That restriction is absent from this case. * * * The evidence in the present record with respect to the prior art Surty and Acme shields differs from that in the Wisconsin action, particularly with reference to the effective courtroom demonstration of those shields given in the trial below. That same difference applies to the magnifying devices."

Petitioner in its petition and brief completely ignores those findings. In fact, it even goes farther than it did before the Court of Appeals. Petitioner throughout its brief urges, contrary to reason and fact, that the issues and the evidence relating to validity before the Wisconsin and Pennsylvana Courts established "identical material facts" and the "same material facts". Such assertions are without any justification whatsoever, and are an imposition upon this Honorable Court.

From the following statements it will be clear how unfounded and fallacious petitioner's contentions are, and this Court can readily determine that there is no "direct basic conflict regarding the law of patentability" existing between the decisions of the Wisconsin and Pennsylvania Courts.

We will first take up the dissimilarity between the records in the Wisconsin and Pennsylvania cases, without reference to collateral factors, such as commercial success,

and then treat those factors later. We follow this procedure because the Pennsylvania Courts held that Claim 6 so clearly lacks patentable novelty that the collateral factors were immaterial. They did, however, throw a cloud on such collateral factors. On the other hand, the Wisconsin Courts, after expressing considerable doubt that the Tautz patent showed invention, devoted their decisions almost entirely to collateral factors, and thereupon resolved the doubt in favor of the patent.

The Issues Involved in the Two Cases, Being Based on Completely Dissimilar Underlying Basic Facts, are Different.

In the Wisconsin case, the accused Hammond shield was practically identical to the patented Tautz shield. The Wisconsin Court compared the two shields word for word and feature for feature in the second column, p. 932, 63 F. Supp. Each of those shields has two lights mounted in compartments disposed along the sides of the transparent panel. The compartments are formed by portions of a skirt and by partitions disposed between the light and the panel for preventing light rays from striking and causing glare on the underside of the panel.

In the instant case, the accused Stanley shield has two lights (substantially forming a continuous long one light) disposed at the rear edge of the transparent panel. It has no partitions, and the light rays do strike the underside of the transparent panel.

In the Wisconsin case, Claims 6, 7, and 8 were relied upon; infringement of Claim 7 was admitted and infringement of Claim 6 was tacitly admitted before the Court of Appeals for lack of reliance there on the defense of non-infringement.

In the instant case, Claim 6 alone is involved and non-infringement was strenuously urged.

In the Wisconsin case, the claim was limitedly construed, as we have pointed out supra under the title "Claim 6 In Suit". Also, the Tautz patent was limitedly construed to grinder use.

In the instant case, petitioner urged a very broad interpretation of Claim 6, as we have pointed out, supra under said title. Also, the limitation of the Tautz patent is absent here.

In the instant case, the Courts did not make any definite conclusions as to infringement, but the District Court did point out in Finding 12 that the accused Stanley device did not have light bulbs located in pockets at the side edges of the transparent panel.

In connection with the Wisconsin District Court's construing claim 6 very limitedly, it is interesting to note that the Court said that "at first blush" it thought it would be obvious to a mechanic skilled in the art to take a Surty one-light shield and replace the one light on top at the rear with two lights, one on each side (center 2nd col. p. 932, 63 F. Supp.; and it then later said (2nd col. p. 933) that Tautz did not solve the problem by merely placing two lights where there had been one before [as in the Surty shield]. It is therefore clear, at least to us, that the Wisconsin Court was clearly of the opinion that there would have been no invention in substituting in the Surty shield two lights at the rear where there had been only one light. This is all that the respondent did in its accused Stanley shield. Actually, the Pennsylvana and Wisconsin Courts are in agreement.

The Evidence as to the Tautz Patent In Suit Concerning Fields of Use Is Different.

As said by the Pennsylvania Court of Appeals:

> "In the Delta (Wisconsin) decision, the Tautz patent was construed as limited to grinder use. That restriction is absent from this case."

A reading of the Wisconsin decisions clearly establishes that those Courts considered Claim 6 as limited to *safety shields for grinders,* and they summarily dismissed the prior art irrespective of the structures shown where no mention was made of the use as shields for grinders.

The Court of Appeals in the instant case (P.A. 70-71a) pointed out that the Tautz patent clearly showed that the shield was not intended solely for use with grinders. In that connection, the Court pointed out that the specification of the Tautz patent states that the safety shield shown "may be applied to other machines or devices" than grinders. In a footnote, the Court pointed out that "at least two of appellant's witnesses supported that construction". We may add that the Court of Appeals is fully supported by the other evidence in the case. The evidence is that shields of this sort are shields of general utility for use on various kinds of machines and devices, including grinders, and have actually been so used. (P.A. 22a, P.A. 6a, 8a; Exhibit 15, P.A. 30a; D.A. 106a, 125a; Exhibit 3, D.A. 341a; and elsewhere).

The Prior Art Is Different

We have listed earlier in this brief the prior art structures and patents fully considered by both of the Pennsylvania Courts. Those Courts carefully analyzed and explained all of this prior art and its pertinency as to the question of invention. The District Court fully summarized this prior art in its "Comments".

On the other hand, in the Wisconsin case the District Court in its opinion only referred to the Surty and Acme shields, and then only in a few short sentences. It summarily dismissed these shields as having made "very little impression on the art".

The Wisconsin Court of Appeals in its decision (153 F. 2d 905) only referred to one-light safety shields and the patents to Jones and Lindsay. That Court summarily dismissed the prior art one-light safety shields as being of little interest, and the Jones and Lindsay patents as being "not in fields analagous to the instant (Tautz) patent".

The Evidence Is Different with Reference to the Prior Art Surty and Acme Shields.

In the instant case, effective demonstrations were carried out at trial with Surty shields and with an Acme shield actually mounted on grinders. Actual grinding operations were carried out. Judge Marsh very carefully followed and observed, for himself, these demonstrations. We again respectfully refer this Court to what Judge Marsh said in his Findings 14, 15, 16, and 17 with respect to these demonstrations.

Petitioner's statement on page 13 of its brief before this Honorable Court that—

> "* * * every exhibit referred to in the decision of the Pennsylvania Court of Appeals for the 3rd Circuit was fully demonstrated to the (Wisconsin) District Court and considered by the Court of Appeals for the 7th Circuit,"

finds no support whatsoever in the record or in the decisions in the Wisconsin case, and is untrue. In the Wisconsin case, no operative demonstrations with either of these shields were carried out before the Courts. True, Surty shields and photographs of such shields mounted on grinders were introduced in evidence, but no actual demonstrations were made in Court. No Acme shield was introduced as an exhibt in evidence or demonstrated in Court. Not the slightest reference is made in the decisions of either of the Wisconsin Courts to any demonstrations of these shields.

In the Wisconsin case the Courts, on the evidence before them, found that the one-light Surty and Acme shields had made little or no impression in the art, and therefore summarily dismissed the same as being of no interest.

In the instant case, the facts are to the contrary, considerable definite proof having been introduced which convinced the Pennsylvania Courts that these shields since 1932 have been continuously on sale and in use, and are used at the present time on grinders, etc.

The Evidence As to Magnifying Devices Is Different.

In connection with magnifying devices such as shown in the Lindsay, Jones and Schaaff patents, actual various demonstrations were carried out at trial in the instant case with an illuminated Stanley magnifying device. Also, evidence was introduced showing that such devices had been and are being sold for use on grinders and a variety of other machines. With respect to the demonstrations at trial, we respectfully call the Court's attention to the testimony which appears on pages 155a-160a of Defendant's Appendix. The petitioner at trial made no real attempt to controvert this testimony or make any counter demonstrations. As to the evidence by other witnesses on the point that magnifiers can be used and are used for grinding, we direct the Court's attention to the testimony appearing at P.A. 9-11a; D.A. 155-156a; P.A. 22a and 26a; and D.A. 106, 107a, and 125a.

Based on this evidence and other testimony, the Pennsylvania District Court made its Finding 21 which we respectfully urge the Court to read at this time.

In the Wisconsin case no magnifying devices whatsoever were introduced in evidence and no demonstrations whatsoever of such devices were made in Court. The only evidence introduced in the Wisconsin case with respect to such devices was that of respondent's witness, Mr. Wiken, a man knowing little about optics or illumination. He testified that magnifying devices resulted in distortion; that if one went beyond the focal point of the lens, the image would be reversed; that the object would have to be at one point only for maximum vision and efficiency; and that the object would be distorted if you don't have it exactly at the focal point. This testimony was incorporated and fully discredited in the record of the instant case (D.A. 268a-272a).

THE ISSUE OF AGGREGATION—THE FACTS AND TREATMENT ARE DISSIMILAR IN THE WISCONSIN AND PENNSYLVANIA CASES

The petitioner makes no mention whatsoever of this issue in its petition and only very briefly refers to it on page 14 of its supporting brief.

In the Wisconsin case, the only reference that the District Court made anywhere to the defense of aggregation will be found in the paragraph of its decision that starts at the bottom of the first column at page 933, 53 F. Supp. There the Court said, "Defendant's position on aggregation cannot be sustained," but made no reference in connection therewith to the structures of the Tautz patent or the prior art or the elements thereof, except to say, "Tautz solved the problem by *not** merely placing two lights where there had been but one before, * * *". The Court of Appeals for the Seventh Circuit makes no reference whatsoever to the defense of aggregation. The Wisconsin Courts did what the Michigan District Court and the Court of Appeals for the Sixth Circuit did as reported in *Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Corp.*, et al, 340 U.S. 147, namely, quoting from that decision:

> "It (the Court of Appeals) identified no other new or different element to constitute invention and overcame its doubts by consideration of the need for some such device and evidence of commercial success of this one."
>
> * * * * *
>
> "Neither court below has made any finding that old elements which made up this device perform any additional or different function in the combination than they perform out of it. This counter does what

*Emphasis supplied. What the Court meant was that Tautz positioned placing them at the rear for the one light in the prior art Acme and Surty his lights along and at the opposite *sides* of the transparent panel instead of shields.

> a store counter always has done—it supports merchandise at a convenient height while the customer makes his purchases and the merchant his sales. The three-sided rack will draw or push goods put within it from one place to another—just what any such a rack would do on any smooth surface—and the guide rails keep it from falling or sliding off from the counter, as guide rails have ever done. Two and two have been added together, and still they make only four."

In the instant case, the Pennsylvania District Court, with additional prior art before it which was not before the Wisconsin Courts, made the following finding (D.A. 325a):

> "23. Claim 6 calls for a mere aggregation of a number of old parts or elements which, in the aggregation, perform or produce no new or different function or operation than that heretofore performed or produced by them."

The Pennsylvania District Court then discussed the defense of aggregation, including the law with respect thereto, starting on page 327a of petitioner's Appendix. It there referred to the "A. & P. Tea Co. case". It pointed out wherein "The combination is not new, physically, functionally or in the result obtained", and it specifically pointed out wherein each of the elements of the Tautz device performed or functioned just as each of those elements "has always done." "None of these functions appear to be new or different".

THE RECORDS OF THE WISCONSIN AND PENNSYLVANIA CASES ARE DIAMETRICALLY OPPOSITE AS TO COMMERCIAL SUCCESS AND OTHER FACTORS CONCERNING THE TAUTZ SHIELD

We discuss this subject with some reluctance, as we really see no need of this Court considering it here. However, since the decisions of the Wisconsin Courts were primarily based on the collateral factors of long-felt want, commercial success, etc., and the petition for certiorari and the brief in support thereof are so permeated with re-

liance on such factors, we feel compelled to reply. We will now discuss a few of these "collateral considerations" very briefly.

In the Wisconsin case the Court of Appeals in its decision emphasized that the Delta bench grinders with Tautz shields on them were generously received "notwithstanding the fact that plaintiff's [petitioner's] grinder and shield sold for more than twice as much as other such competing devices." (p. 907, 153 F. 2nd). In the instant record the testimony on which that finding was made was completely discredited, as the Court will see upon reading the testimony, starting on page 307a of petitioner's Appendix. In the instant case, the proofs are that other grinder manufacturers sold comparable grinders without shields at list prices comparable to or higher than the Delta bench grinders with shields.

In the Wisconsin case the Court of Appeals stated that the Delta shields were generously received by the public at high prices "and that too without previous paid advertising". The testimony on this point was completely discredited in the record of the instant case (see testimony starting on page 313a of petitioner's Appendix). In the instant case, the Pennsylvania District Court found "the Delta shield was not introduced without advertising". The proofs here are that Delta spent over $5,000 in advertising in introducing these shields.

In the Wisconsin case the Courts in their opinions laid considerable stress on the public acceptance and the increase in sales of the Tautz shield. In the instant case the proofs are that there was nothing unusual in the public reception of or the sales of the Tautz shield. With advertising behind the shields, it would have been remarkable had they not been sold. The period of sales considered by the Wisconsin Court covered the years of recovery from the depression. The testimony here is that during that period the sales of grinders and/or shields by other companies picked up in 1935 and increased generally in pro-

portion to the yearly sales by Delta (P.A. 15a, 18a, 23a). In view of this and other evidence in the instant case, the Pennsylvania District Court found in Finding 24 (D.A. 325a), "the Court is not convinced its [Delta shield's] success was unusual".

In the Wisconsin case the Court's apparently thought that, on the evidence before them, goggles for grinding operation had largely been displaced by the Tautz shield. That that is far from the fact was recognized by the Pennsylvania District Court in the said Finding 24, where it said, "the evidence indicates that the Delta shields did not replace goggles". This finding is fully supported by the instant record. Goggles are sold in tremendous numbers as compared to the number of lighted shields sold. Petitioner's witness Doyle testified (D.A. 199a) that the State of Wisconsin required the use of goggles on all types of grinders, and even when the grinder is equipped with Delta shields. Petitioner's own evidence discloses that the United States Department of Labor recommended goggles for grinder use in preference to shields, because goggles give "maximum protection" (D.A. 438a).

CONCLUSION

We submit that the Petition is wholly without merit and should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 112

ROCKWELL MANUFACTURING COMPANY, *Petitioner,*

v.

THE STANLEY WORKS, *Respondent.*

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The purpose of this brief is to invite the court's attention to statements appearing in respondent's brief which may confuse the clear issues presented by the petition for writ of certiorari.

Respondent states at page 2 of its brief that "No question of general or public interest is here involved." and that "No important question of Federal Law is involved here.". Petitioner's position on this point is developed at pages 4 and 5 of its main brief to which the attention of the court is respectfully invited.

It should be emphasized again that it is primarily the resolution of the conflict between the decisions of the

courts of the Third Circuit and Seventh Circuit in this case and the conflict between the Third Circuit and the courts of such circuits as the Second, Sixth and Seventh and this court on the approach of the Federal courts on the question of inventiveness which petitioner is here seeking to resolve.

That this conflict is an "important question of Federal law" which is "of general public interest" seems to be beyond dispute. Further that this conflict exists and merits this court's attention is believed to be established in the petition and main supporting brief.

The admitted differences in the prior patents and uses offered before the courts of the Seventh and Third Circuits upon which respondent relies heavily are, we submit, immaterial since, as pointed out at pages 12 and 13 of petitioner's main brief, the additional prior art before the Third Circuit Court of Appeals was not determinative of its decision.

Petitioner was regrettably in error in asserting that the Acme shield was fully demonstrated to the courts of the Seventh Circuit. However the Kelleher patent under which the Acme shield was manufactured was, as stated, fully considered by the courts of the Seventh Circuit as was a photograph showing the Acme shield in operative position.

The Surty and Boys' Tech shields were physically before the Wisconsin *District* Court and an offer of demonstration was made and rejected as not forming a part of a proper record for appeal.

The Surty and Boys' Tech shields as well as the Delta shield were, as stated in petitioner's brief, operatively demonstrated to the *Court of Appeals* for the Seventh Circuit.

Respondent in its brief, pages 10 and 14, we submit, unfairly represents the Wisconsin District Court's position with respect to its determination of the invention of the Tautz patent by paraphrasing and quoting portions only of one sentence of the opinion. These portions of the

sentence standing alone tend to give color to respondent's position but, we submit, fail to fairly represent the Court's views. In this connection respondent's brief and the Court's opinion read as follows:

Statement of Respondent's Brief

At page 10, respondent's brief reads, insofar as pertinent to this point, " * * * the Court said * * * and it then later said (2nd Col. p. 933) that Tautz did not solve the problem by merely placing two lights where there had been one before [as in the Surty shield]."

At page 14,

> "There the Court said, 'Defendant's position on aggregation cannot be sustained,' but made no reference in connection therewith to the structures of the Tautz patent or the prior art or the elements thereof, except to say, 'Tautz solved the problem by *not** merely placing two lights where there had been but one before, * * *.'"

What the Wisconsin Court Actually Said

The Court, in describing the Tautz invention and disposing of the defense of aggregation, actually said (63 F. Supp. 933):

> "(3) Defendant's position on aggregation cannot be sustained. The real invention in producing a satisfactory grinder shield was the appreciation that wheel burns to the hands usually resulted either from fatigue-induced contact with the wheel or more likely from poor visibility induced by inadequate illumination, and the realization of the need for and the provision of the protection of, a shield with correlated illuminating means in light-diffusing compartments providing the unitary result of adequate shadowless illumination without reflection, thereby permitting the worker to assume a safe, protected, comfortable position for accurate grinding work. Tautz solved the problem by not merely placing two lights where there had been

* Emphasis respondent's Brief.

but one before, but by designing a small shield structure which could be mounted close to the work where it did not interfere with accurate close grinding from a comfortable position, which protected the worker against eye and face injuries, and which provided adequate diffused illumination in an unusual manner without reflections and without shadows from parts of the machine, or the work, or the worker."

We submit the Wisconsin Court here very clearly states that the invention of the Tautz patent resides in the correlation of shadowless illumination to a small shield structure for protecting the worker against eye and face injuries in a manner to avoid reflections and shadows cast by parts of the machine upon which the shield is used and the work and the worker during operation of the machine. It is the correlation of the protective features of a shield and the shadowless illumination which together and only together provide effective worker protection. No one prior to Tautz had achieved this desirable correlation of elements which the Wisconsin Court deemed was the invention here in question. It is difficult to imagine a more proper disposition of the defense of aggregation making direct reference to the structure of the Tautz patent, we submit, than that contained in the above quotation from the Wisconsin District Court's opinion. Certainly this quotation refutes and demonstrates the complete lack of basis for respondent's statement that "There the Court said, 'Defendant's position on aggregation cannot be sustained,' but made no reference in connection therewith to the structures of the Tautz patent * * *"

We further submit the substantial portion of respondent's brief discussing the views of the Wisconsin Courts on the question of infringement by the Hammond shield have little, if any, relation to the question of validity before this Court. We further submit the above quotation from the Wisconsin District Court's opinion clearly establishes that the Wisconsin District Court did not, as respondent's brief

suggests (Brief page 5), " * * * limitedly construed Claim 6 to what is shown in the Tautz patent * * * ". Certainly in disposing of the defense of aggregation the Wisconsin Court quite broadly stated the nature of the Tautz invention to be a small shield in combination with "correlated illuminating means in light-diffusing compartments providing the unitary result of adequate shadowless illumination without reflection thereby permitting the worker to assume a safe, protected, comfortable position for accurate grinding work."

While the Wisconsin Courts did concentrate their expressions of inventiveness on grinder use of shields the language of the Court quoted above, we submit, shows a clear awareness of the invention as being a particular and effective correlation of shadowless illumination in a small shield structure capable of close association with the tool of a machine tool so as not to hinder the worker in safely and accurately manipulating the work with respect to the tool.

Conclusion

For the reasons developed in the Petition and main brief and in view of the above it is respectfully requested that the Court grant a writ of certiorari.

Respectfully submitted,

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